

CIVIL SERVICE COMMISSION MINUTES

February 2, 2000

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 310 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Sigrid Pate
Mary Gwen Brummitt
Roy Dixon
Gordon Austin
Gloria Valencia-Cothran

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
February 2, 2000

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
2			5

COMMENTS Motion by Austin to approve all items not held for discussion; seconded by Dixon. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Brummitt: Donovan Jacobs Esq., on behalf of **Steven Napolitano**, Corrections Deputy Sheriff, appealing an Order of Termination from the Sheriff's Department.

B. Commissioner Pate: Everett Bobbitt, Esq. on behalf of **Mark Fuentes**, Deputy Sheriff, appealing an Order of Termination (failure of probation) from the Sheriff's Department.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of February 2, 2000.

Approved.

DISCIPLINES

Findings

2. Commissioner Brummitt: Donovan Jacobs Esq., on behalf of **Steven Napolitano**, Corrections Deputy Sheriff, appealing an Order of Termination from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - conduct unbecoming an officer of the County of San Diego (removed uniform shirt and challenged inmate); Cause II - discourteous treatment of the public; Cause III - profanity; Cause IV - failure of good behavior; Cause V - inefficiency; and Cause VI - acts incompatible and/or inimical to the public service. Employee has been employed by the Sheriff's Department as a Corrections Deputy for approximately six years. Employee, through his counsel, stipulated to the factual allegations set forth in Causes I through III, however was allowed to present limited additional evidence regarding the circumstances directly relevant to those Causes.

The Department presented testimony that the removing of a uniform shirt and challenging an inmate was serious enough to alone support the termination. Employee contended that the incident was done in a light-hearted manner, and did not involve a serious fight challenge. The Hearing Officer took under consideration the fact that all of Employee's performance appraisals were above-standard/outstanding, and that the Department failed to document Employee's unbecoming conduct in the performance appraisal covering the rating period in which the incident(s) took place.

In another instance, Employee was charged with excessive force when he pushed an inmate up against a wall. In this case, Employee's use of force was a one-handed push resulting in neither pain nor injury. Credible testimony at the hearing supported the position that it is the practice of the Department to not make written reports of every instance of use of force when neither pain nor injury is inflicted. Accordingly, no documentation was required.

There was no indication in Employee's prior record of an anger management problem, and in fact, Employee's overall "above standard" and "outstanding" Employee Performance Appraisal Reports gave him high marks in the specific areas of "performance under pressure", "public and/or employee relations", "cooperation" and "quality of judgment".

The Hearing Officer concluded that the circumstances were conflicting, and the incidents were more the result of bravado, familiarity with the inmates, and over confidence. It was determined that Employee has demonstrated his value to the Department. Nevertheless, Employee's conduct warrants severe discipline. It is therefore ordered that the Order of Termination be reduced to a ninety calendar-day suspension without pay; the Employee will be awarded back pay, benefits and interest from the date of termination through the date of the Commission's decision, minus any wages he received from outside employment and minus the ninety calendar-day suspension referred to above; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission, and that the Commission approve and file this report.

During the reading of the Findings at the Commission meeting on February 2, 2000, the Department, represented by Julie Strauss, Esq., requested, through staff, that she be allowed to speak. Executive Officer, Larry Cook, explained to the Commission that they could in fact allow Ms. Strauss to address the Commission, however, precedent has been to allow parties to address the Commission before the Findings are read (this item had previously been addressed and voted upon at the April 7, 1999 Civil Service Commission Meeting). After

discussion and input from Deputy County Counsel Ralph Shadwell, the Commission decided to remain status quo, thereby not allowing input from Ms. Strauss.

**Motion by Brummitt to approve Findings and Recommendations;
seconded by Austin. Carried. Dixon and Valencia-Cothran No.**

3. Commissioner Pate: Everett Bobbitt, Esq. on behalf of **Mark Fuentes**, Deputy Sheriff, appealing an Order of Termination (failure of probation) from the Sheriff's Department. (See item no. 6 below)

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - conduct unbecoming an officer of the County of San Diego (challenged inmate); Cause II - failure of good behavior; Cause III - inefficiency; Cause IV - failure of good behavior; Cause V - inefficiency, and Cause VI - acts incompatible with and/or inimical to the public service.

Appellant, a former deputy sheriff with the Sheriff's Department presented two issues at a pre-hearing conference on January 26, 2000. (1) Whether he was terminated after his 18 month probationary period thereby allowing him to request a Rule VII disciplinary hearing; and (2) whether he is entitled to a Liberty Interest hearing.

Upon the conclusion of the Department's oral argument, at the pre-hearing conference, Appellant through his counsel conceded that he was still in the probationary period at the time of his termination, and therefore not entitled to a Rule VII hearing.

With respect to Appellant's claim that he is entitled to a Liberty Interest hearing, he should be granted a hearing based on the fact that the Order of Termination will be placed in his personnel file and it will be disclosed to prospective law enforcement employers to which Appellant applies for employment. The Order of Termination does allege misconduct by Appellant.

It is therefore recommended that Appellant's request for a Rule VII Hearing be denied; that Appellant's request for a Liberty Interest Hearing be granted and that a hearing officer be assigned; that this proposed decision shall become effective upon the date of approval by the Civil Service Commission and the Commission approve and file this report.

**Motion by Pate to approve Findings and Recommendations;
seconded by Austin. Carried.**

Considerations

4. Everett Bobbitt, Esq., on behalf of **Robert Roberson**, Deputy Sheriff, appealing an alleged punitive transfer within the Sheriff's Department.

RECOMMENDATION: Deny Request (Continued from Civil Service meeting of January 19, 2000.)

Staff recommendation approved.

WITHDRAWALS

5. Commissioner Dixon: Richard Pinckard, Esq. on behalf of **John Lorenz**, Deputy Sheriff, appealing an Order of Reassignment (Including Loss of Investigator Premium Pay) and Charges from the Sheriff's Department.

Withdrawn.

LIBERTY INTEREST

6. Commissioner Pate: Everett Bobbitt, Esq. on behalf of **Mark Fuentes**, Deputy Sheriff, requesting a Liberty Interest hearing concerning his termination (failure of probation) from the Sheriff's Department. (See item no. 3 above)

RECOMMENDATION: Assign a hearing officer and conduct a Liberty Interest hearing.

Staff recommendation approved. Commissioner Dixon assigned.

OTHER MATTERS

Extension of Temporary Appointments

7. Health and Human Services Agency

A. 8 Residential Care Worker Trainees (Gary Potts, Atiya Henry, Carola Gomez, Judit Bako, Sallie Escobedo, Patricia Trujillo, Sonia Luna, Jacquelynne Mathews)

B. 1 Residential Care Worker II (Luz Lambert)

C. 1 Protective Services Worker I (Raymond Cameron)

D. 1 Laundry Worker (Leticia Melendez)

8. Department of Public Works

1 Intermediate Clerk Typist (Walker Maxey)

Item Nos. 7 and 8 ratified.

9. Public Input.

ADJOURNMENT: 3:15 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE MARCH 1, 2000.